IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 957 of 1992

With

CRIMINAL APPEAL No. 1117 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HITESHBHAI R PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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CRIMINAL APPEAL No. 957/1992 :

Appearance :
MR JB PARDIWALA for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1

CRIMINAL APPEAL No. 1117/1992 :

Appearance :
MR HL JANI APP for Appellant(s) : 1,
MR B.K. DAVE for Opponent(s) : 1 & 2.

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/11/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE R. P. DHOLAKIA)

1.0 These appeals are directed against the judgment and order dated 12.08.1992 passed by the learned Addl. Sessions Judge, Valsad at Navsari in Sessions Case No. 86 of 1991 whereby, original accused no. 1 was convicted for the offences punishable u/s. 302 & 452 of the Indian Penal Code, 1860 [for short, "the I.P.C."] while original accused no. 2 & 3 were acquitted from the offences punishable u/s. 302, 454 & 34 of the I.P.C..

1.1 For conviction u/s. 302 of the I.P.C., original accused no. 1 was sentenced to undergo rigorous imprisonment for life with fine of Rs.500/- and in default of payment of fine, rigorous imprisonment for a further period of one year. For conviction u/s. 452 of the I.P.C., original accused no. 1 was sentenced to undergo rigorous imprisonment for a period of six months with fine of

Rs.250/- and in default of payment of fine, rigorous imprisonment for a further period of one month. Both the sentences were ordered to run concurrently. Original accused no. 1 was also given the benefit of set-off.

1.2 Criminal Appeal No. 957/1992 has been preferred by original accused no. 1 in the aforesaid Sessions Case while Criminal Appeal No. 1117/1992 has been preferred by the State challenging the impugned judgment and order passed by the Court below qua acquitting original accused no. 2 & 3 from the charges leveled against them.

2.0 As both these appeals arise from the same judgment and order passed by the Court below, they are disposed of by way of this common judgment.

3.0 Before proceeding further, it may be noted that during the pendency of the appeals, respondent no. 1 in Criminal Appeal No. 1117 of 1992, original accused no. 2, expired on 12.08.2006. Mr. B. K. Dave learned Advocate appearing on behalf of both the

respondents in Criminal Appeal No. 1117 of 1992 has produced a copy of the Death Certificate of respondent no. 1 in Criminal Appeal No. 1117 of 1992, which is taken on record.

3.1 In above view of the matter, Criminal Appeal No. 1117 of 1992 stands abated qua respondent no. 1 – original accused no. 2 and it is proceeded on merits only qua respondent no. 2 i.e. original accused no. 3.

4.0 Further more, it appears that the appellant – accused of Criminal Appeal No. 957 of 1992 had sent an application through jail, which was numbered as Criminal Misc. Application No. 13492 of 2007, for his release on temporary bail. A similar application being Criminal Misc. Application No. 13768 of 2007 was also preferred by the appellant through his Advocate. Apart from the above two applications, the appellant - accused had also preferred an application being Criminal Misc. Application No. 14001 of 2007 for early hearing of Criminal Appeal No. 957 of 1992.

4.1 All the aforesaid three applications were listed on Board

of this Court today. As we have proceeded with the final hearing of the main appeal being Criminal Appeal No. 957 of 1992 along with Criminal Appeal No. 1117 of 1992, we have disposed of the aforesaid three applications by three different orders today. So far as the two applications for temporary bail, being Criminal Misc. Application No. 13492/2007 & 13768 of 2007 are concerned, we have not entertained the same but, so far as Criminal Misc. Application No. 14001/2007 is concerned, we have accepted the relief claimed by the appellant – original accused no. 1 for early hearing of Criminal Appeal No. 957 of 2007.

4.2 Accordingly, with the consent of learned counsel for the respective parties, we have proceeded with the final hearing of both the appeals for today.

5.0 The brief facts of the prosecution case are as under;

5.1 Deceased Ambubhai Ranchhodbhai Patel was residing along with his family consisting of his wife and four children in Village Bhatha of Taluka Gandevi of District Valsad and was earning his livelihood by working as a Mason. On 02.06.1991, at

around 2030 hrs., a quarrel took place between the deceased and his wife – Kantaben Ambubhai Patel, on some issue regarding lavishly spending of money by the deceased on food items.

5.2 At around 2130 hrs., the appellant – accused and respondents no. 1 & 2 in the appeal preferred by the State, original accused no. 2 & 3, entered the house of the deceased and inquired as to why the said quarrel was going on between them. In pursuance thereof, some altercation took place between the deceased and the three accused persons. In that process, all the accused persons dragged the deceased out of his house and original accused no. 2 & 3 caught hold of the deceased and, thereafter, the appellant – accused inflicted knife blows on the face and chest portion of the body of the deceased. As a result of the said incident, the deceased succumbed to the injuries on the spot.

5.3 At around 2300 hrs., the daughter of the deceased, Bawiben Ambubhai Patel, went to Billimora Police Station along with her uncle – Ramanbhai Bhanabhai Patel. She lodged a complaint against the accused persons which was registered as I –

C.R. No. 84 of 1991 for offences punishable u/s. 452, 302 and 34 of the I.P.C.

5.4 Necessary preliminary investigation was carried out. The Investigating Officer went to the scene of offence and performed inquest '*panchnama'*. '*Marnottar'* form was filled up and necessary arrangement was made for sending the dead body for performing post-mortem.

5.5 In the meanwhile, the Investigating Officer carried out '*panchnama'* of the scene of offence and also collected necessary '*muddamal'* articles. The clothes worn by the deceased person at the relevant point of time were also seized. Thereafter, the '*muddamal'* articles so collected were sent to F.S.L. for examination. On receipt of the F.S.L. Report, PM note and other Reports, they were kept in the investigation file.

5.6 Further investigation was carried out and statements of several witnesses were recorded. As cogent evidence was found against the three accused persons, they were arrested on

04.06.1992 and sent to judicial custody. During the course of interrogation, as the appellant – accused showed willingness to produce the weapon 'knife' used in the commission of the alleged offence in question, the same was seized by way of a separate '*panchnama'.*

5.7 On completion of investigation, charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate First Class, Gandevi. As the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Gandevi committed the case to the Sessions Court, Valsad at Navsari and the same was numbered as Sessions Case No. 86 of 1991. The matter was then transferred to the learned Addl. Sessions Judge, Valsad for disposal on merits. On production of the accused persons, the learned Addl. Sessions Judge framed the charge and as the accused persons pleaded not guilty to the said charges, trial was conducted against them.

6.0 The prove the guilt against the accused persons, the prosecution has examined in all ten witnesses viz. PW – 1 Dr.

Prabhubhai Ramjibhai Patel at Exhibit – 13, PW – 2 Kuvarjibhai Jagabhai at Exhibit – 15, PW – 3 Gandabhai Laxmanbhai at Exhibit – 17, PW – 4 Bawiben Ambubhai Patel at Exhibit – 20, PW – 5 Kantaben Ambubhai Patel at Exhibit – 22, PW – 6 Dr. Bipinbhai Chibabhai at Exhibit – 23, PW – 7 Ramanbhai Bhanabhai at Exhibit – 24, PW – 8 Savitaben Chimanbhai at Exhibit – 25, PW – 9 Shirishbhai Ramanbhai at Exhibit – 26 and PW – 10 Ghanshyamsinh Jhala at Exhibit – 28.

6.1 The prosecution had also relied upon several documentary evidence, more particularly, the evidence in the form of discovery '*panchnama'* at Exhibit – 18, Post-mortem note at Exhibit – 14, Inquest '*panchnama'* at Exhibit – 8, Map of the place of offence at Exhibit – 16, *'panchnama'* of the scene of offence at Exhibit – 19, the complaint at Exhibit – 21 and the F.S.L. Report at Exhibit – 11.

6.2 On submission of the closing 'purshis', the further statement of the accused persons was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel

for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order convicting the appellant – accused and acquitting original accused no. 2 & 3, as stated in the earlier part of this judgment. Hence, the present appeals.

7.0 Mr. J. B. Pardiwala learned Advocate for the appellant – accused has submitted that except the evidence led by the wife of the deceased – Kantaben Ambubhai Patel as PW – 5 at Exhibit – 22, there is no other evidence on record to connect the appellant – accused with the crime in question. He has contented that on close scrutiny of the evidence led by PW – 5, it is clear that she is not an eye-witness to the alleged incident in question, as has been claimed by the prosecution.

7.1 Learned Advocate has submitted that even if it is believed that PW – 5 is an eye-witness to the alleged incident in question, then also this would be a case based on solitary eye-witness. In such circumstance, the evidence led by this witness is required to be scrutinized closely and the same could be relied upon, only if it is found reliable and trustworthy on such close

scrutiny. He has contented that in the case on hand the evidence led by the so-called solitary eye-witness (PW – 5) is not found to be reliable and trustworthy and, therefore, the evidence led by this witness could not be relied upon.

7.2 Learned Advocate for the appellant – accused has further contented that the prosecution has failed to prove beyond doubt the discovery '*panchanama*' at Exhibit – 18. He has submitted that the 'knife', alleged to have been produced by the appellant – accused, is not the one said to have been used in the commission of the offence in question. He has contented that the aforesaid fact is established from the evidence led by the wife of the deceased, the Doctor who has examined the deceased and the Post-mortem note of the deceased at Exhibit – 14. Hence, the impugned judgment and order passed by the Court below deserves to be quashed and set aside.

7.3 Learned Advocate for the appellant – accused has, therefore, contented that under no circumstances the appellant – accused could be held guilty for the offence punishable u/s. 302 of

the I.P.C.. He has submitted that if one goes through the entire oral as well as documentary evidence available on record, this would be a case essentially falling u/s. 304-I of the I.P.C. and not a one falling u/s. 302 of the I.P.C.. Moreover, no motive or any past enmity appears to be behind the alleged offence in question.

7.4 Learned Advocate has lastly submitted that if this Court is not inclined to entertain the appeal preferred by the appellant – original accused no. 1, then the Court may, by taking a lenient view of the matter, reduce the sentence awarded by the Court below to a one already undergone by the appellant – accused, as the appellant – accused has already undergone more than nine years of imprisonment.

8.0 Mr. H. L. Jani learned APP has submitted that this is a case where the prosecution has been able to prove the guilt of the appellant – accused beyond doubt. He has submitted that the presence of the appellant – accused, at the relevant point of time, has been clearly established, more particularly, when the incident in question has taken place in the premises of the deceased, both

the sides are known to each other and the presence of the witnesses at the scene of incident at the relevant point of time was a natural one.

8.1 Learned APP has further submitted that the evidence led by the witness/s is required to be weighed in light of the fact that they are tribal people and are illiterate. Hence, their evidence is required to be considered on the material point only. He has contented that on material point, the evidence led by the wife of the deceased, Kantaben Ambubhai Patel, is consistent. Apart from that nothing incriminating has come out from her cross-examination. Therefore, the evidence led by her could be relied upon for recording conviction.

8.2 Learned APP has further submitted that the appellant - accused had initially shown willingness to produce on record the '*muddamal'* weapon 'knife' used in the commission of the alleged offence in question. However, subsequently, he tried to take advantage of his own wrong by producing a different 'knife' with blood stains of the deceased with a view to escape the punishment

for criminal prosecution. He has contented that looking to the medical evidence on record in the form of Post-mortem note of the deceased, it is clear that the appellant – accused had inflicted the said blows on the person of the deceased with an intention to kill the deceased. Therefore, essentially there was motive / intention behind committing the offence in question. Hence, the impugned judgment and order passed by the Court below is required to be confirmed.

9.0 So far as the appeal preferred by the appellant – State is concerned viz. Criminal Appeal No. 1117 of 1992, learned APP has submitted that the presence of respondents no. 1 & 2 – original accused no. 2 & 3, at the relevant point of time, along with the roles played by them has been clearly established from the evidence on record. Learned APP has drawn our attention to the evidence discussed by the Court below in Paras 13 & 14 of the impugned judgment and has submitted that the Court below has committed serious error in acquitting respondents no. 1 & 2 – original accused no. 2 & 3 from the alleged offence in question. Hence, respondent no. 2 – original accused no. 2 is also required

to be convicted for the alleged offences in question.

10.0 Mr. B. K. Dave learned Advocate appearing on behalf of respondent no. 2 – accused in Criminal Appeal No. 1117 of 1992 has submitted that looking to the entire oral as well as documentary evidence available on record, the Court below was completely justified in acquitting respondent no. 2 – original accused no. 2 from the alleged offences in question.

10.1 Learned Advocate has submitted that keeping in mind the principle laid down by the Apex Court as regards appeal preferred against an order of acquittal passed by a lower Court, this Court may not interfere with the impugned judgment passed by the Court below qua acquitting respondent no. 2 – accused from the alleged offence in question. Hence, the appeal qua respondent no. 2 – accused deserves to be rejected.

11.0 Having heard learned counsel for the respective parties, it appears that the case of the prosecution mainly rests upon the oral evidence of PW – 1 Dr. Prabhubhai Ramjibhai Patel

at Exhibit – 13, PW – 3 Gandabhai Laxmanbhai at Exhibit – 17 and PW – 5 Kantaben Ambubhai Patel at Exhibit – 22 and documentary evidence in the form of discovery '*panchnama'* at Exhibit – 18, the Post-mortem note of the deceased at Exhibit – 14, Inquest '*panchnama'* at Exhibit – 8, Map of the place of offence at Exhibit – 16, *'panchnama'* of the scene of offence at Exhibit – 19, the complaint at Exhibit – 21 and the F.S.L. Report at Exhibit – 11.

12.0 We have minutely scrutinized the evidence led by the wife of the deceased – Kantaben Ambubhai Patel, who has been examined as PW – 5 at Exhibit – 22, in order to ascertain as to whether she is an eye-witness to the alleged incident in question or not and, if yes, as to whether her evidence is reliable and trustworthy on the basis of which conviction can be recorded without any corroboration.

12.1 In her deposition, PW – 5 has stated that at the time of the incident in question she was at her home along with her deceased – husband and daughter – Bawiben. At that time, the three accused persons came to their house and threatened that

they would kill the deceased. In pursuance thereof, they dragged the deceased out of her house and thereafter, respondent no. 1 – accused [deceased] sat on the abdomen portion of the body of the deceased while respondent no. 2 – accused caught hold of the deceased off his head and the appellant – accused, who was having a knife in his hands, inflicted blows on the face and chest portion of the body of the deceased. On noticing the same, she shouted for help and one of their neighbours arrived at the place of incident. At that time, the accused persons fled the scene of offence. Thereafter, her daughter – Bawiben went to inform her brother – Ramanbhai Bhanabhai Patel about the said incident and later both of them went to Billimora Police Station for the purpose of filing a complaint.

12.2 In her cross-examination, she has categorically admitted that on the date of the alleged incident in question, certain words were exchanged between her and her deceased – husband on the aspect of spending money lavishly on food items. Learned Advocate for the appellant – accused has tried to bank upon the evidence led by PW – 5 in her cross-examination to the effect that

she has categorically stated that the '*muddamal'* weapon 'knife' shown to her in the Court below was not the 'knife' alleged to have been used by the appellant – accused in the commission of the offence in question and on the aspect of her admitting that before she could come out of her house the accused persons had killed her deceased – husband.

13.0 Before dealing with the aforesaid aspects, it would be relevant to refer to the oral evidence of the Medical Officer of Billimora Hospital, Dr. Prabhubhai Ramjibhai Patel, who has been examined as PW – 1 at Exhibit – 13. In his deposition, PW – 1 has stated that there were two external and four internal injuries on the body of the deceased and that all the injuries were anti-mortem. Through the evidence of this witness, the prosecution has proved the Post-mortem Report of the deceased at Exhibit – 14. In Column No. 17 of the Post-mortem Report, the Medical Officer has narrated about the internal injuries sustained by the deceased and about the cause of death. However, in his cross-examination, the Medical Officer has categorically admitted that the injuries narrated in Column No. 17 of the Post-mortem Report were not possible by

way of the '*muddamal'* weapon 'knife'.

14.0 It is true that both PW – 5 Kantaben Ambubhai Patel at Exhibit – 22 and PW – 1 Dr. Prabhubhai Ramjibhai Patel at Exhibit – 13 have not supported the prosecution story so far as the aspect of '*muddamal'* weapon 'knife' is concerned. At this juncture, it would be relevant to state that the prosecution has been able to prove beyond doubt, through the evidence of PW – 3 Gandabhai Laxmanbhai at Exhibit – 17, the discovery '*panchnama'* at Exhibit – 18. The F.S.L. Report at Exhibit – 11 also shows the existence of human blood of Blood Group 'B' on the '*muddamal'* weapon 'knife', which is similar to the Blood Group of the deceased.

15.0 Keeping in mind the aforesaid evidence on record viz. the oral evidence of PW – 3 Gandabhai Laxmanbhai at Exhibit – 17, the discovery '*panchnama'* at Exhibit – 18 and the F.S.L. Report at Exhibit – 11, the probability cannot be ruled out that at the initial stage, the appellant – accused, after showing his willingness to produce on record the original 'knife' used by him in the commission of the offence in question, must have produced the

'*muddamal'* knife in question by improving upon the same in order to protect himself from conviction under criminal prosecution.

15.1 Moreover, it is also to be kept in mind that the incident in question took place during night hours on account of which PW – 5 might not have been in a position to notice the actual 'weapon' used by the appellant – accused in committing the offence in question. Therefore, simply because the medical opinion states that the injuries in question were not possible by the '*muddamal'* weapon 'knife', we cannot ignore the oral evidence of PW – 3 Gandabhai Laxmanbhai at Exhibit – 17, discovery '*panchnama'* at Exhibit – 18 and the F.S.L. Report at Exhibit – 11.

16.0 On the basis of the statement made by PW – 5 in his cross-examination to the effect that before the deceased could come out of the house the accused persons had killed the deceased, learned Advocate for the appellant – accused has tried to convince this Court that PW – 5 is not an eye-witness to the alleged incident in question. It is a matter of record that the incident in question took place at around 2130 hrs. which is such a time of

the day when a majority of the persons would be in their respective homes, more particularly, the female members. It may be noted that it has never been the case of the other side that at the time of the incident in question, PW – 4 Bawiben Ambubhai Patel or PW – 5 Kantaben Ambubhai Patel were not present in the house. In that view of the matter and looking to the evidence on record, it has to be concluded that the deceased, PW – 4 and PW – 5 were present in the house at the relevant point of time. No question of misidentifying the accused persons would also arise since both the sides belonged to the same community, were known to each other and it is evident from the record that prior to the incident in question an altercation had also taken place between PW – 5 and the accused persons. Hence, the use of a sharp weapon in the commission of the offence is proved beyond doubt.

16.1 It is true that PW – 5 has stated in her cross-examination that before she could come out of her home, the accused persons had killed her deceased – husband. Here, it would be relevant to state that the aforesaid statement made by PW – 5 is to be considered in light of the fact that the said witness

belongs to a tribal community and is also illiterate. Therefore, the evidence led by such witness is required to be considered on a material point.

16.2 It is an established fact that the accused persons had killed the deceased after forcefully bringing the deceased out of his house by dragging him prior to which the accused persons had an altercation with PW – 5. It is also an established fact that at the relevant point of time PW – 5 was present in the house. Therefore, considering the facts and circumstances of the case, it is highly unbelievable that when the accused persons were dragging the deceased out of his house, the wife of the deceased i.e. PW – 5, would simply sit / wait inside the room, more particularly, when on reaching the house of the deceased, the appellant – accused had threatened that they would kill the deceased on that day.

16.3 By such statement in the cross-examination, it could be said that while the accused persons were committing the offence in question, PW – 5 was in her house from where she was able to notice the entire incident. The aforesaid conclusion arrived at by

this Court would also get support from the fact that the accused persons had created an atmosphere of terror at the relevant point of time which would have prompted PW – 5 to remain inside the house and to simply view the blood-cuddling act being committed by the accused persons as a mere spectator. Therefore, the said defence taken by learned Advocate for the appellant – accused has no substance and deserves to be rejected.

16.4 Even if we believe that someone else might have killed the deceased, then also we do not find any reason/s as to why PW – 5 would falsely involve the three accused persons in the alleged offence in question. In this case, as stated herein above, PW – 5 had full opportunity to see the accused persons and, therefore, we believe her evidence to be wholly reliable and trustworthy.

16.5 Thus, when the evidence led by PW – 5 is found to be reliable and trustworthy, the next question that is required to be considered by this Court is as to whether her evidence could be relied upon for recording conviction since it would be a case of “solitary eye-witness”. Keeping in mind the evidence discussed

herein above, we have no hesitation in solely relying upon the evidence of this eye-witness for recording conviction.

16.6 Even if we arrive at the conclusion that the evidence of PW – 5 requires corroboration, then also it gets support from the oral evidence of PW – 1 at Exhibit – 13 and PW – 3 at Exhibit – 17 and documentary evidence in the form of Post-mortem note at Exhibit – 14, the F.S.L. Report at Exhibit – 11 and discovery '*panchnama'* at Exhibit – 18. Hence, we are of the opinion that the evidence led by PW – 5 at Exhibit – 22 is reliable and trustworthy on the basis of which the appellant – accused could be convicted and the Court below was completely justified in convicting the appellant – accused for the alleged offence in question.

17.0 The principles which would govern and regulate the hearing of an appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place

of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

18.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".

19.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled. Keeping in mind the entire evidence available on record, as discussed herein above, the Court below has rightly acquitted respondent no. 1 & 2, original accused no. 2 & 3, from the charges levelled against them. In our opinion, the Court below was completely justified in acquitting respondents no. 1 & 2, original accused no. 2 & 3 from the charges levelled against them.

20.0 In view of the above discussion, we are of the opinion that the findings recorded by the Court below are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by the Court below. We are in complete agreement with the findings, ultimate conclusion and the resultant order recorded by the Court below and hence, find no

reasons to interfere with the same.

21.0 In the result, both the Appeals are dismissed. Office is directed to send the Records & Proceedings of the case lying with this Court to the trial Court concerned forthwith.

[R. P. DHOLAKIA, J.] [K. S. JHAVERI, J.]

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